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C O N F I D E N T I A L SECTION 01 OF 02 THE HAGUE 001858

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DEPARTMENT FOR S/WCI - PROSPER/MILLER, USUN FOR ROSTOW, EUR - JONES, EUR/SCE - JONES/GREGORIAN, L/EUR - LAHNE, L/AF - GTAFT. INR/WCAD - SPRIGG

E.O. 12958: DECL: 1.6 FIVE YEARS AFTER CLOSURE ICTY

TAGS: BK HR KAWC NL PHUM PREL SR ICTY ICTR

SUBJECT: ICTY: DEL PONTE PUSHES BACK; SEEKS MEETING WITH SG ANNAN

¶1. Classified by Clifton M. Johnson, Legal Counselor, Reason 1.5(d) and 1.6.

¶2. (C) Summary. Carla Del Ponte, Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), is seeking an urgent meeting with UN Secretary General Annan, perhaps as early as tomorrow, to take a sounding of the extent of his support for her and to lobby for her position. At her request, Senior Adviser Anton Nikiforov conveyed to the U.S. and other governments her request for greater involvement in the crafting of the Security Council resolution's language relating to the completion strategy, defended her leadership of the ICTR, and pressed for more explicit language in the draft resolution that would give her a stronger basis for limiting future indictments. End summary.

¶3. (C) Office of the Prosecutor (OTP) Senior Adviser Anton Nikiforov requested a meeting with Embassy legal officers to convey a message from Chief Prosecutor Carla Del Ponte concerning the renewal of her mandate and a related security council resolution. Nikiforov explained that he had been asked to brief representatives of various key capitals today, had already spoken to the UK and planned to meet with France shortly. Nikiforov explained that there were three key issues in play: the separation of the ICTY/ICTR prosecutor position into two positions, the extension of Del Ponte's term for a "limited" period, and language from the Security Council in the form of either a Presidential Statement or resolution relating to the completion strategy. Del Ponte opposed the first two initiatives, but supported the third.

ICTY/ICTR Chief Prosecutor Position

¶4. (C) With respect to the creation of a separate ICTR prosecutor position, Nikiforov conveyed Del Ponte's view that it was "not reasonable to take this step after ten years." Del Ponte believes that the situation in the ICTR has stabilized, that the right people have been found to run the prosecutor's office there (i.e. the new deputy prosecutor and chief of prosecutions), and that the new team has had visible results. According to Nikiforov, Del Ponte recognizes that for many years the ICTR was adrift but that it is now "running smoothly" and there is good coordination among its various officials. She said she was committed "at all costs" to finish investigations by 2004 and trials by ¶2008. If a change is made now, it will "create a new crisis." Del Ponte believes that the new deputy and chief of prosecutions will leave if ICTY and ICTR functions are split.

Del Ponte to Lobby in NY for Renewal

¶5. (C) Nikiforov advised that Del Ponte was seeking a meeting with Secretary General Annan tomorrow, July 23, in New York to discuss the full renewal of her mandate. He and other OTP staffers had been tasked with preparing a paper that Del Ponte would present to Annan describing her various accomplishments in both the ICTY and ICTR. Based on the signal she received from Annan, she might then seek meetings with various Security Council members to lobby for her renewal. Nikiforov implied that Del Ponte would take her cue from Annan and that the degree to which she pressed back with respect to manner in which her mandate was renewed would be driven by her perception of his commitment to her. (Note: We understand from other contacts that SG Annan's Office is likely to reject this request and advise her not to travel to NY at this time. End note).

Completion Strategy

¶6. (C) In Del Ponte's view, she "created the completion strategy." She understands that draft security council language is circulating in New York and wants to be actively involved in formulating the language. (Note. Based on Nikiforov's knowledge of various details, it appears that she has a copy of the U.S. proposed draft. End note.) Nikiforov confirmed that Del Ponte is receiving information about the negotiations through "secret" calls but said she would like to be approached openly for her views. According to Nikiforov, Del Ponte would like to see the language

constraining new indictments of non-senior level officials moved from the preambular section to the operative section of the resolution.

17. (C) Nikiforov further advised that Del Ponte believes the proposed language is "too vague" and would like to see it as firm and explicit as possible. Nikiforov explained that trial and investigative teams will be pressing her to approve new indictments and that she will be under pressure to forward them for confirmation. Absent explicit language, this would "put the Prosecutor in a difficult situation." Pressed to explain what additional detail was desired, Nikiforov indicated that the term "leadership" was vague, though he also said that such terms were "more appropriately" defined by the judges than the Security Council. Nikiforov further reported that in a one-on-one conversation between Del Ponte and ICTY President Meron, Meron had told Del Ponte that he would not forward any new indictments to judicial chambers for confirmation until the UNSC acted on the completion strategy. (Note: Meron confirmed that such a meeting had occurred but characterized as "absolutely untrue" the statement attributed to him by Del Ponte. He had instead said that if the Security Council acted to limit the scope of future indictments to senior leadership cases that he would only confirm such indictments. End note). Nikiforov summed up by saying that if the Security Council passed a detailed resolution with clear criteria on appropriate indictments, Del Ponte could say, "We did our best, we were ready to do more, but the Security Council has the authority and has made clear its view."

Comment

18. (C) Nikiforov was placed in the unusual position of delivering Del Ponte's views on "political" matters by the absence from the Hague of political adviser Jean-Daniel Ruch. Nikiforov has been with the ICTY for a long time and is a knowledgeable and skilled professional committed to the Tribunal's mission. He delivered Del Ponte's message strongly despite the mixed views he has previously expressed about her performance. He noted in passing that Del Ponte had asked him to weigh in with Russia and that he had been "placed in a difficult position" by his government's "strong support" for the U.S. and UK efforts in New York. End comment.

RUSSEL